

## **Exhibit D**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JEFF POKORNY, LARRY BLENN  
and KENNETH BUSIERE on behalf of  
themselves and those similarly situated,

Plaintiffs,

v.

QUIXTAR INC., *et al.*,

Defendants.

Case No. C 07-00201 SC

**[PROPOSED] CONSENT  
JUDGMENT AND DISMISSAL OF  
ALL CLAIMS WITH PREJUDICE**

1 The Court, having considered: (1) the Class Action Settlement Agreement, dated  
 2 November \_\_, 2010 (“Settlement Agreement”), including all exhibits thereto; and (2) the Joint  
 3 Motion for Entry of Consent Judgment and Dismissal of all Claims with Prejudice filed by  
 4 Quixtar and Plaintiffs on \_\_\_\_\_, 2011 (the “Joint Motion”), and all of the supporting material  
 5 submitted in connection with that Joint Motion; and having held a Settlement Hearing on  
 6 \_\_\_\_\_, 2011,<sup>1</sup> and having considered the record of those proceedings, the representations,  
 7 arguments, and recommendations of counsel for the moving parties, and the requirements of law,  
 8 the Court hereby ORDERS, ADJUDGES, and DECREES that:

9 1. The Court has jurisdiction over the subject matter and parties to this proceeding,  
 10 including all members of the Settlement Class, pursuant to 28 U.S.C. § 1331.

11 2. Venue is proper in this District.

12 3. Quixtar is ordered, throughout the term of this Consent Judgment, except where a  
 13 different term is specified, as follows:

14 a. Quixtar shall modify its agreements with its Independent Business Owners  
 15 (“IBOs”) to provide not less than a 90-day refund period for registration fees. The 90-day refund  
 16 period for an IBO’s registration fees will begin from the time that Quixtar receives the  
 17 registration fee from the IBO.

18 b. The application form that new IBOs are required to execute to register as a  
 19 Quixtar IBO shall disclose the following information: (a) that income figures provided to  
 20 potential IBOs represent gross, not net income; (b) the availability of training for IBOs in  
 21 marketing and merchandising; (c) Quixtar’s refund policies for products purchased by IBOs; (d)  
 22 the availability of a retail product price list schedule accessible on-line; and (e) that product  
 23 purchases and purchases of Business Support Materials (“BSM”) are optional.<sup>2</sup>

24 \_\_\_\_\_  
 25 <sup>1</sup> At the Settlement Hearing, the Court also heard Class Counsel’s Application for an  
 26 Award of Attorneys’ Fees, Reimbursement of Expenses, and Named Plaintiff’s Compensation.  
 The Court rules on that Application in a separate order.

27 <sup>2</sup> BSM are motivational and/or training aids in the form of books, magazines, other printed  
 28 material, audio taps, video tapes, software, internet services, CDs, other electronic media, rallies,  
 meetings, functions, seminars, and other services and materials.

1 c. Quixtar shall comply with state and federal law by the following: (1) not  
2 compensating any IBO primarily for the act of recruiting or registering other IBOs; and (2) not  
3 requiring any IBO to purchase or maintain any specified amount of inventory. In addition,  
4 Quixtar will emphasize consumer sales by conditioning bonus payments and other incentives, as  
5 appropriate, on IBOs achieving reported levels of sales to end-user consumers.

6 d. Quixtar will maintain for twenty-four months from the Effective Date or  
7 from June 30, 2011, whichever occurs first, a price reduction that averages at least 5% from  
8 January 2007 pricing levels to distributors across Quixtar-branded products (existing SKUs,  
9 excluding freight). Because the reduction will be measured on an average reduction basis, this  
10 provision allows for price increases on certain products to account for increases in the cost of  
11 sales and competitive conditions, so long as, notwithstanding any such increases for particular  
12 products, the average price for the group is at least 5% lower than the January 2007 price.

13 e. Quixtar will increase its annual IBO training budget for product, product  
14 merchandising, and business skills by an average of \$7 million or more over 2007 levels for  
15 twenty-four months from the Effective Date or from June 30, 2011, whichever occurs first, such  
16 training to be provided free to IBOs.

17 f. Quixtar will maintain and enforce quality control over BSMs that are: (1)  
18 sold or distributed by Quixtar IBOs and Quixtar IBO affiliated persons that, during the class  
19 period, sold BSM to IBO's ("BSM Companies"); and (2) sold or distributed in a manner  
20 suggesting sponsorship, affiliation, or approval by Quixtar. Quality control shall provide that the  
21 content of such BSMs complies with state and federal law. This Subsection applies to BSM  
22 Companies affiliated with the Quixtar business. Quixtar shall not be liable for contempt of this  
23 Consent Judgment based on good faith determinations of what constitutes sale or distribution "in  
24 a manner suggesting sponsorship, affiliation, or approval by Quixtar" of non-Quixtar authorized  
25 BSMs.

26 g. Quixtar's compliance with the provisions in Subparagraphs 3(a)-(f) shall be  
27 subject to monitoring through annual meetings between Quixtar and attorneys from Boies,  
28 Schiller, and Flexner, LLP and Gary, Williams, Finney, Lewis, Watson & Sperando (collectively,

1 “Class Counsel”). Class Counsel shall be provided with unresolved complaints from IBOs  
 2 alleging violation of the terms of this Consent Judgment. Such unresolved complaints shall be  
 3 treated as confidential, except as necessary to enforce this Consent Judgment in a court of law.

4 h. The provisions in Subparagraphs 11(a)-(g) are binding on Quixtar IBOs,  
 5 BSM Companies, and other Persons who are Released Parties or who are served with this  
 6 Consent Judgment pursuant to Fed. R. Civ. P. 65.

7 4. Upon the Effective Date, by operation of this Consent Judgment, the Releasing  
 8 Parties shall release and forever discharge all Released Claims with respect to the Released  
 9 Parties. The Releasing Parties are barred from prosecuting any proceeding against any of the  
 10 Released Parties with respect to any Released Claim. The terms “Releasing Parties,” “Released  
 11 Parties,” and “Released Claim” are defined as follows:

12 a. “Releasing Party” means: (1) all Identified BSM Companies; and (2) all  
 13 members of the Settlement Class and all of their present or past spouses, heirs, executors, estates,  
 14 administrators, predecessors, successors, and assigns. “Releasing Party” does not include  
 15 members of the Settlement Class who opt out of the Settlement Agreement. “Releasing Party”  
 16 does not include Quixtar, except that Quixtar shall release any claims brought and that could have  
 17 been brought against Jeff Pokorny, Larry Blenn, and Kenneth Busiere in their individual  
 18 capacities.

19 b. “Released Parties” means: (1) Quixtar; (2) the Identified BSM Companies  
 20 (however, BSM Companies who are identified in the Second Amended Complaint but who do not  
 21 sign this Settlement Agreement are not Released Parties even if they fall into another category  
 22 listed in this section); (3) all current or former IBOs who, at any time during the Class Period,  
 23 sold or marketed Quixtar products or BSM or who recruited or attempted to recruit other Persons  
 24 to register as an IBO (except for the principal owners of the BSM Companies who are identified  
 25 in the Second Amended Complaint but who do not sign this Settlement Agreement); (4) all BSM  
 26 Companies affiliated with the Quixtar business at any time during the Class Period and/or other  
 27 legal entities through which a current or former IBO, at any time during the Class Period, sold or  
 28 marketed Quixtar products or BSM or recruited or attempted to recruit other Persons to register as

1 an IBO (except for BSM Companies who are identified in the Second Amended Complaint but  
 2 who do not sign this Settlement Agreement); and (5) any and all of the present or past heirs,  
 3 executors, estates, administrators, predecessors, successors, parents, subsidiaries, affiliates,  
 4 directors, managing directors, officers, partners, principals, members, shareholders, legal  
 5 representatives, and assigns of the Persons identified above in this Paragraph.

6 c. “Released Claims” means all claims (including “Unknown Claims” as  
 7 defined below), demands, rights, liabilities, suits, or causes of action as of the date of the final  
 8 approval of the Settlement Agreement that (1) were or could have been asserted in the  
 9 complaints filed in this Action against Quixtar, any of its current or former IBOs, or against any  
 10 BSM Company or its principal owners, or (2) that are based upon, arise out of, or reasonably  
 11 relate to (i) the purchase or sale or offer of sale of any Quixtar product during the Class Period  
 12 other than warranty claims or other claims for defective products, (ii) the purchase or sale or offer  
 13 of sale of any BSM during the Class Period, (iii) the payment of monies to Quixtar to register as a  
 14 Quixtar IBO during the Class Period, (iv) the IBOs’ contract with Quixtar, including the Quixtar  
 15 Independent Business Owner Compensation Plan, the Biz Reference Guide, and the Rules of  
 16 Conduct, (v) Quixtar’s and the BSM Companies’ business operations during the Class Period,  
 17 (vi) any actual or potential recruitment of any Quixtar IBO during the Class Period, (vii) any  
 18 allegation that, during the Class Period, Quixtar and/or the BSM Companies operated, separately  
 19 or together, any type of illegal or fraudulent scheme, and/or (viii) any of the facts, schemes,  
 20 transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations,  
 21 omissions, or failures to act that have been or could have been alleged or asserted in the Action.  
 22 “Released Claims” do not include claims that may exist as of the Effective Date that arise from  
 23 the following: (a) The calculation of bonuses or payments for the sale of Quixtar Products owed  
 24 by Quixtar or other Released Party to any individual IBO under Quixtar’s agreements with the  
 25 IBO, (b) an allegation that a Quixtar product was defective or delivered improperly, (c) claims of  
 26 workplace discrimination or sexual harassment; (d) claims relating to any health care or pension  
 27 plan; or (e) a dispute between Settlement Class Members and Released Parties that is entirely  
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1 unrelated to any of the claims, issues, or factual allegations raised in any of the complaints in the  
2 Action.

3 For purposes of this Consent Judgment, "Unknown Claims" means claims that could have  
4 been raised in this Action and that any Releasing Party does not know or suspect to exist, which,  
5 if known by it, might affect its agreement to release the Released Parties or the Released Claims  
6 or might affect its decision to agree, object or not to object to the Settlement. Upon the Effective  
7 Date, all Releasing Parties shall be deemed to have, and shall have, expressly waived and  
8 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542  
9 of the California Civil Code, which provides as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO  
11 CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
12 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
13 THE TIME OF EXECUTING THE RELEASE, WHICH IF  
14 KNOWN BY HIM OR HER MUST HAVE  
15 MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
16 WITH THE DEBTOR.

17 Released Claims encompass, without limitation, claims that are accrued or unaccrued,  
18 fixed or contingent, direct, individual or representative, asserted by or on behalf of unnamed  
19 Settlement Class Members in a putative or certified class action, in law or in equity, for damages,  
20 injunctive relief, rescission, disgorgement, or restitution or any other right, remedy, or relief of  
21 every nature and description whatsoever, whether based on federal, state, local, statutory or  
22 common law or any other law, rule or regulation, including the law of any jurisdiction outside the  
23 United States, that were brought or could have been brought in the complaints in this Action. By  
24 way of illustration, Released Claims include, without limitation, claims under the Racketeer  
25 Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.*, the Securities Act of 1933  
26 and the Securities and Exchange Act of 1934 and any other law that concerns the sale of  
27 securities, any state franchise relations laws, any state franchise investment laws, any state  
28 business opportunity plan laws, any state seller-assisted marketing plan laws, Federal Trade  
Commission's Franchise Disclosure Rule, 16 C.F.R. Part 436, the Federal Trade Commission's  
Business Opportunity Disclosure Rule, 16 C.F.R. Part 437, any mail fraud or wire fraud statutes,  
any unfair and deceptive acts and practices statutes, such as, California Bus. & Prof. Code §§

1 17200 and 17500, *et seq.*, any false advertising laws, and any statutes regarding the operation of  
2 fraudulent schemes (including “chain distributor schemes” or “endless chain schemes”) such as  
3 California Penal Code § 327. Released Claims also include, without limitation, claims for fraud,  
4 deceit, negligent misrepresentation, negligence, gross negligence, professional negligence, breach  
5 of duty of care, breach of duty of loyalty, breach of duty of candor, breach of fiduciary duty,  
6 fiduciary abuse, mismanagement, breach of contract, breach of implied contract, promissory  
7 estoppel, unjust enrichment, breach of the covenant of good faith and fair dealing, negligent  
8 supervision, declaratory relief, indemnification, defense, or contribution.

9 5. [Placeholder: Following the Settlement Hearing, this Subsection will provide a  
10 discussion of whether the Settlement was reached in “good faith,” for purposes of determining  
11 whether joint tortfeasors should be barred from asserting contribution or indemnification claims  
12 against Quixtar or the Identified BSM Companies].

13 6. The Court shall retain exclusive jurisdiction to resolve any disputes or challenges  
14 that may arise as to the performance of Quixtar and Plaintiffs with respect to the Settlement  
15 Agreement or any challenges to the validity, interpretation, administration, enforcement, or  
16 enforceability of this Consent Judgment or the Settlement Agreement.

17 7. This Consent Judgment shall not be construed or used as an admission,  
18 concession, or declaration by or against Quixtar or any of the Identified BSM Companies of any  
19 finding of fault, wrongdoing, or liability. This Consent Judgment shall not be construed or used  
20 as a waiver or admission as to any arguments or defenses that might be available to Quixtar or  
21 any of the Identified BSM Companies, including any objections to class certification in the event  
22 that the Settlement is terminated.

23 8. With respect to any continuing duties, rights, obligations, or prohibitions set forth  
24 herein, this Consent Judgment shall expire four years after the date that it is entered by the Court,  
25 except for the provisions under Paragraph 4 (Releases), Paragraph 6 (Bar Order), and Paragraph 8  
26 (Use of the Consent Judgment). The running of the four-year term of the Consent Judgment shall  
27 be tolled during any stay of the Consent Judgment.  
28



IT IS SO ORDERED this \_\_\_\_ of \_\_\_\_\_, 2010.

[PROPOSED] CONSENT JUDGMENT AND  
DISMISSAL OF CLAIMS; CASE No. C 07-00201 SC  
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